IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 15580 of 2007(D)

PETITIONER:

N.G.SREEDHARAN, S/O.GOPALAN,
AGED 54 YEARS, JUNIOR SUPERINTENDENT,
DISTRICT LABOUR OFFICE, MALAPPURAM.

BY ADV. SRI.JACOB SEBASTIAN.

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY SECRETARY**
   TO GOVERNMENT, DEPARTMENT OF LABOUR,
   GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. **THE LABOUR COMMISSIONER, OFFICE OF**
   THE LABOUR COMMISSIONER, HOUSING BOARD BUILDING,
   TRIVANDRUM.

3. **THE DISTRICT LABOUR OFFICER,**
   MALAPPURAM.

BY GOVT. PLEADER SRI. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.15580/2007-D:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE COMMUNICATION DTD. 06/12/2006 OF THE R.2.

EXT.P.2: COPY OF THE ORDER DTD. 20/04/2007 OF THE R.2.

EXT.P.3: COPY OF THE LETTER DTD. 02/05/2007 OF THE R.2.

EXT.P.4: COPY OF THE MEMO OF CHARGES IN RELATION TO THE SAID DISCIPLINARY PROCEEDINGS DTD. 19/03/2005.

EXT.P.5: COPY OF THE MEMO OF CHARGES RELATING TO THE DISCIPLINARY PROCEEDINGS DTD. 08/09/2005.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

V.GIRI, J.

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W.P.(C)NO.15580 OF 2007

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Dated this the 6th day of December 2007

JUDGMENT

Petitioner claims to be a senior most Superintendent in the Department of Labour. He is aggrieved by the fact that he is not promoted to the post of Senior Superintendent. Apparently his name has not been placed before the Departmental Promotion Committee, on account of the fact that disciplinary proceedings are pending against him, as evidenced by Exts.P4 and P5.

2. Pendency of disciplinary action by itself is not a reason to exclude a person from consideration by the DPC. This is the principle that has been laid down by this Court on more than one occasion. This is the position which emerges from a reading of Rule 28(b)(i) of Part II of KS& SSR.

3. In the circumstances, the writ petition is disposed of directing the second respondent to take appropriate action to see that the petitioner's name is also considered by the Departmental Promotion Committee in relation to the post of Senior Superintendent. Since the petitioner is due to retire in January 2008, the first respondent shall also consider whether the petitioner can be provisionally promoted in the absence of a select list, taking note of the circular issued by the

government enabling consideration of eligible incumbents for provisional promotion in the absence of a select list. Needful shall be done by the first respondent who shall take a decision in this regard on or before 15.1.2008. Petitioner shall produce a copy of the writ petition along with the representation indicating these aspects and a certified copy of this judgment before the first respondent, at the earliest.

V.GIRI, JUDGE

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